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COMMONWEALTH OF KENTUCKY

ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY

403 WAPPING STREET
FRANKFORT, KENTUCKY 40601

ANTHONY M. WILHOIT
Court of Appeals

THOMAS J. KNOPF
District Court

JOSEPH H. ECKERT
Circuit Court

B. M. WESTBERRY, CHAIRMAN
Attorney

UHEL O. BARRICKMAN
Attorney

JUDICIAL ETHICS OPINION JE-47

Informal

QUESTION: Where the county attorney and the trial commissioner for district court are partners in civil practice, must the trial commissioner disqualify himself in all cases in which the county attorney appears, both civil and criminal?

ANSWER: Yes, except in emergency situations where a failure to act would result in a frustration of the criminal justice process.

REFERENCES: SCR 4.300, Canon 2B and 3C(1); Judicial Ethics Opinions JE-8, 43, 44; KBA Ethics Opinion E-214.

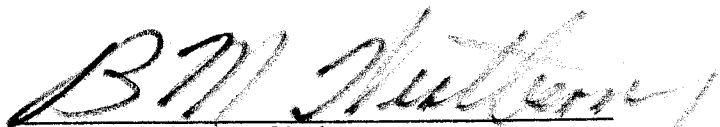
OPINION (October 1983):

We have already held, in our JE-44, that the trial commissioner must disqualify himself in cases in which his partner is appearing, and KBA Ethics Opinion takes the same position. We think it is irrelevant that the partnership covers civil matters only. As E-214 puts it:

An attorney should not be allowed to appear before a commissioner where the attorney and commissioner are engaged as partners (in any form) in the practice of law. The appearance of impropriety is simply too obvious.

In our JE-8, we recognized an exception to this rule, based upon necessity, in judicial circuits where there is but one judge and one prosecutor between whom there is a familial relationship. Because disqualification in all criminal cases would work a hardship - not only on other judges who would have to take over in such cases, but also on the defendant whose trial might have to be postponed - we held that the judge might sit, although we recognized that "the better practice would indicate that the judge disqualify."

We think that the reasoning in that opinion does not apply to the trial commissioner in district court because the district judge himself is usually available. The hardships referred to in JE-8 would not normally occur. The only situation in which the trial commissioner should act would be emergencies where time is of the essence and where a delay would thwart the criminal justice system.


B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary